IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

Crl.MC.No. 2132 of 2006()

MC.20/2000 of CHIEF JUDICIAL MAGISTRATE COURT, PATHANAMTHITTA

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PETITIONER: RESPONDENT:

M.V. AUGUSTINE,
MUTTUMANNIL HOUSE, CHUNKAPPARA P.O.,
MALLAPPALLY, THIRUVALLA.

BY ADV. SRI.P.VINODKUMAR

RESPONDENTS: PETITIONERS:

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1. VINCY AUGUSTINE,
PRAKKATT MANNATHU HOUSE, KEEZHUVAIPUR P.O.,
MALLAPPALLY.

2. BRIGHTY AUGUSTINE,
PRAKKATT MANNATHU HOUSE, KEEZHUVAIPUR P.O.,
MALLAPPALLY.

3. BEAUTY AUGUSTINE,
PRAKKATT MANNATHU HOUSE, KEEZHUVAIPUR P.O.,
MALLAPPALLY.

4. BONNY AUGUSTINE (MINOR),
S/O. VINCY AUGUSTINE, PRAKKATT MANNATHU HOUSE,
KEEZHUVAIPUR P.O., MALLAPPALLY.

BY ADV. SRI.SAIGI JACOB PALATTY
PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 19/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2132 of 2006

Dated this the 19th day of February 2007

O R D E R

Against the petitioner, an order has been passed under Section 125 Cr.P.C. The respondents are wife and children of the petitioner herein. They have filed an application claiming recovery of an amount of Rs.1,34,500/- by resort to the coercive process under Section 128 Cr.P.C. The petitioner has raised an objection that claiming of such huge arrears for the period from 17/05/2000 to 15/12/2005 is not legally maintainable and that the same is barred specifically under the first proviso to Section 125(3) Cr.P.C. The petitioner has rushed to this court before the learned Magistrate considered the said objection and passed orders. According to the petitioner, he has already deposited the amount payable for a period of one year prior to the date of filing of the petition.

2. I am certainly of the opinion that the learned Judge of the Family Court must first of all consider the maintainability of the application for recovery of the amounts by resort to coercive process in the light of the stipulation in the first proviso to

Section 125(3) Cr.P.C. Only after the said objection is considered, should the learned Magistrate proceed with the matter any further.

3. This Criminal Miscellaneous Case is in these circumstances, allowed. The learned Judge of the Family Court is directed to consider the said objection raised in the light of the first proviso to section 125(3) Cr.P.C and pass appropriate orders. Only after giving a ruling on that question shall the Judge of the Family Court proceed further with the matter.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006